

Decision **DRAFT DECISION OF ALJ SIMON** (Mailed 7/25/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Santa Clara Valley Transportation Authority for an order approving safety appliances to be used at the at-grade crossings of Sunol Street (82D-4.1) and Auzerais Avenue (82D-4.2) by the light rail transit line of the Vasona Light Rail Project in the City of San Jose, County of San Clara.

Application 02-01-031
(Filed January 28, 2002)

OPINION ON PETITION FOR MODIFICATION OF DECISION 04-11-035

Summary

We modify Decision (D.) 04-11-035 to change the location and design of warning devices, eliminate several requirements for traffic signs and directional information, and conform required signs to the new configuration, at the crossing at Sunol Street and Auzerais Avenue in the City of San Jose (City) for the Vasona Light Rail Project of the Santa Clara Valley Transportation Authority (SCVTA).

Procedural History

In D.04-11-035, issued November 19, 2004, we granted, with modifications, SCVTA's application to place warning devices at the Sunol and Auzerais crossings. (A map showing the area of these crossings and others is attached as Appendix A.) The modifications were adopted on the basis of evidence presented at the evidentiary hearing held in February 2004 and modifications to the crossing design proposed by SCVTA or the protestant, Floor Service Supply

Company (FSSC), during the course of substantial post-hearing briefing. SCVTA was authorized to implement a crossing design that involved placing Standard No. 9 warning devices as set out in General Order (GO) 75-C in specified locations near the Sunol Street entrance to the FSSC “will call” lot (FSSC lot) and at the Auzerais Avenue entrance to the FSSC lot. Additional warning devices and various ancillary traffic signs, directions, and control measures, as specified in Appendix C to D.04-11-035, were also required. The striping of Sunol Street north of the crossing was to be made “double-double” yellow, with the addition of two “no left turn” signs, one before the Sunol Street entrance to the FSSC lot and one before the entrance to the FSSC delivery area.¹

On April 8, 2005, FSSC filed and served its Petition for Modification of D.04-11-035 (Petition). In the Petition, FSSC sought modifications that would:

- Relocate the crossing gate on the Auzerais side of the FSSC driveway to permit the widest possible opening of the driveway, to a minimum width of 20 feet, so that the FSSC driveway could safely be used by two-way traffic;
- Close the Sunol entrance to the FSSC driveway with a locking gate;
- Eliminate various ancillary requirements in D.04-11-035 related to the one-way flow of traffic through the FSSC lot set forth in that decision, including traffic direction markings, exit only signs for the Auzerais driveway, and “no left turn” markings on FSSC buildings; and
- Eliminate street markings and signs related to the one-way flow of traffic, specifically the requirement of “double-double”

¹ The entrance to the delivery area, which is north of the Sunol Street entrance to the FSSC lot, is not at issue here, with the exception of the placement of one “no left turn” sign.

yellow striping on Sunol Street and the installation “no left turn” signs on Sunol Street northbound before the Sunol entrance to the FSSC lot and before the FSSC delivery area.

On May 3, 2005, SCVTA filed its Response of Santa Clara Valley Transportation Authority to Petition for Modification of Floor Service Supply company (Response). In its Response, SCVTA presented an engineered design that would move the Auzerais Avenue gate at the FSSC driveway to allow the driveway opening to be between 20 and 24 feet, through the use of a 50-foot extendable gate.² The general plan of the crossings proposed by SCVTA is attached as Appendix B; the detailed plan of the area of the gate is attached as Appendix C. SCVTA also agreed with many of FSSC’s proposed suggestions for elimination of ancillary requirements. SCVTA objected to FSSC’s request for removal of the “no left turn” sign for the delivery area. SCVTA urged that the Sunol driveway be permanently closed off, rather than fenced with a locking gate that could be opened. Finally, SCVTA sought an additional modification of one of the provisions of D.04-11-035, requesting that the train speed limit for that crossing be raised from 35 miles per hour (mph) to 50 mph.³

After obtaining permission from the assigned Administrative Law Judge (ALJ) in accordance with Rule 47(g) of the Commission’s Rules of Practice and

² The driveway width in the configuration ordered in D.04-11-035 would have been approximately 17 feet.

³ Because this request was not embodied in a petition for modification, as required by Rule 47 of the Commission’s Rules of Practice and Procedure, we do not consider it here. The plan in Appendix B indicates that the speed limit will be 50 mph. That speed limit should be changed in future reproductions of the plan.

Procedure⁴, FSSC filed its Reply to Response of Santa Clara Valley Transportation Authority to Petition for Modification (Reply) on May 19, 2005. In the Reply, FSSC expressed its agreement with SCVTA's design for the new configuration at the Auzerais driveway and agreed to defer to the judgment of the City of San Jose and the Commission on the "no left turn" signs. FSSC withdrew its suggestion that the Sunol entrance be closed by a locking gate, on the basis that the San Jose Fire Department had determined that it would not need such a gate for emergency access. FSSC objected to SCVTA's desire to raise the speed limit to 50 mph, but stated its willingness to defer to the judgment of Commission staff on the speed limit.

Discussion

In D.04-11-035, we determined a configuration for the Sunol/Auzerais crossing that allowed for a safe crossing while not creating new safety hazards related to the FSSC driveways. In January 2005, the City, which is not a party to this proceeding, expressed concerns to the parties and staff about the street striping and signs to be placed on Sunol Street.⁵ Further discussions among the City, SCVTA, FSSC, and staff ensued. Late in March 2005, discussions began on an initial proposal to close the Sunol driveway and expand the effective width of the Auzerais driveway for FSSC's lot. The Petition followed soon thereafter. The

⁴ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

⁵ A copy of a draft letter from staff of the City's Department of Transportation Planning was attached to the Petition. Though all parties agree that it is only a draft, there is no suggestion in the record that the draft does not express the same concerns the City raised to parties and staff.

parties and staff continued to discuss various details related to the proposed changes over the next few months.

Although the parties have neither entered into a stipulation or settlement pursuant to Rule 51.1 nor made any other joint filing with respect to the Petition, it appears that they now agree on all substantive matters raised in the Petition.

The areas of agreement are:

1. The crossing at the Auzerais Avenue driveway of FSSC's lot will be redesigned in accordance with the plan in Appendix B to allow effective widening of the driveway to approximately 24 feet when the gate is raised.
2. An extendable 50-foot long crossing gate will be installed at the Auzerais Avenue driveway of FSSC's lot, in accordance with the plans in Appendix B and C.
3. An "active" "no left turn" sign will be placed on eastbound Auzerais to prevent attempted left turns into the driveway when the gate is lowered.⁶
4. An additional pair of flashers shall be positioned on the eastbound Auzerais Avenue Standard No. 9, across the street from the FSSC driveway, positioned for maximum visibility to vehicles exiting the FSSC facility.
5. The Sunol Street driveway to FSSC's lot will be permanently closed.
6. "Do Not Stop on Tracks" signs will be mounted immediately before and after the Auzerais Avenue crossing for eastbound traffic.
7. Lines will be painted on the pavement, parallel to the tracks, delineating the area where vehicles can safely queue at the approach to the Auzerais Avenue crossing.

⁶ An "active" sign is one whose illumination is activated when the gate is lowered.

8. “Keep Clear” signs will be painted on the pavement in the area where vehicles cannot safely queue.
9. Sunol Street north of the crossing should be striped with a single double yellow stripe.
10. A sign stating “no left turn into driveway” should be placed on northbound Sunol Street before the entrance to the FSSC delivery area.
12. All other ancillary signs, postings, and traffic directions required by D.04-11-035 are unnecessary if the proposed modifications are adopted.⁷

The most important elements of this consensus are the closure of the Sunol driveway and the effective widening of the Auzerais driveway for the FSSC lot. The wider driveway on Auzerais will accommodate two-way traffic that can include trucks. This will become the only entrance and only exit to the FSSC lot, removing the need for the more complex one-way in and one-way out flow of traffic through the FSSC lot mandated by D.04-11-035. The closure of the Sunol driveway, very close to the Sunol crossing, will eliminate the potential for unexpected problems that could be caused by drivers ignoring or misunderstanding the traffic flow set forth in D.04-11-035.

The need for a large number of signs and markings to implement the plan in D.04-11-035 is also eliminated by the proposed modifications. We retain the “no left turn” sign for the FSSC delivery area, north of the Sunol crossing, to

⁷ Although the parties did not expressly agree on this point, it is also unnecessary for SCVTA to prepare flyers explaining the new crossing and driveway configuration for FSSC customers, since the new configuration is self-explanatory and more similar to the current use of the FSSC lot and driveways than was the configuration required by D.04-11-035.

protect against possible queuing problems on Sunol. We modify the wording of the sign in accordance with the parties' understanding of the wishes of the City. Because the Sunol driveway will be closed, there is no need for the very stringent "double double" yellow striping we required in D.04-11-035. The City's preference for an ordinary double yellow striping of Sunol can therefore be implemented.

These proposed modifications will enhance safety at the crossings, simplify the traffic pattern, eliminate the need for many signs with numerous instructions, and satisfy the City's concerns about the proper management of traffic on Sunol Street. D.04-11-035 should be modified to reflect these improvements.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Anne E. Simon is the assigned Administrative Law Judge for this proceeding.

Comments on Draft Decision

The draft decision of ALJ Simon in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by SCVTA on August 15, 2005.⁸ SCVTA pointed out several inconsistencies in the draft decision, which we now correct. SCVTA also asserts that it has not withdrawn its request that the speed limit be raised from 35 mph to 50 mph. SCVTA further argues that the draft decision's treatment of the status and views of the City is inaccurate.

⁸ FSSC did not file comments. Its counsel circulated an e-mail to the service list, dated August 15, 2005, expressing general agreement with the draft decision.

SCVTA's request to raise the speed limit was made in its Response. This does not comply with Rule 47(a)'s requirement that a petition for modification be filed to "ask[] the Commission to make changes to the text of an issued decision." We therefore will not consider this request here.

Despite SCVTA's elaborate argument about the party status of the City, the City is not a party to this proceeding. It has not filed an appearance and it has not requested that it be placed on the official service list. To avoid the apparent misunderstanding about the history of the City's participation, the wording of the draft decision has been modified. In relation to the proposed modification of D.04-11-035, the City's views have been expressed to parties and staff, and have been placed in the record through the parties. The wording of the draft decision has been modified to clarify that relationship.

Findings of Fact

1. The parties are in agreement on the desirability of substantive modifications to D.04-11-035.
2. The modifications agreed to by the parties will enhance the safety of the Sunol Street/Auzerais Avenue crossings.
3. The modifications agreed to by the parties are consistent with the traffic and safety requirements of the City of San Jose.

Conclusions of Law

1. Modification of D.04-11-035 as set forth herein will enhance safety at the Sunol Street/Auzerais Avenue crossings.
2. In order to allow construction to be completed expeditiously, this order should be effective immediately.

ORDER

IT IS ORDERED that:

1. Appendix B and Appendix C of Decision (D.) 04-11-035 are deleted and replaced by Appendix B and Appendix C, respectively, attached hereto.
2. Ordering Paragraphs 3, 4, 5, and 6 of D.04-11-035 are deleted and replaced by the following:
 3. SCVTA is authorized to undertake the work shown on the plans in Appendix B and Appendix C. As part of that work, the driveway from Sunol Street to FSSC's will call lot shall be permanently closed.
 4. The placement of warning devices at Auzerais Avenue shall allow the driveway from Auzerais Avenue to the FSSC will call lot to be approximately 24 feet wide when the gate is raised. The warning devices at Auzerais Avenue shall consist of two Standard No. 9s, placed on the western and eastern approaches to the crossing, and a third non-standard 50 foot extendable No. 9 mounted as an exit gate from the FSSC will call lot for westbound traffic on Auzerais Avenue, for a three-quad gate arrangement. An additional pair of flashers shall be positioned on the eastbound Auzerais Avenue Standard No. 9, across the street from the FSSC driveway, positioned for maximum visibility to vehicles exiting the FSSC facility.
 5. Traffic and street signs and markings shall be placed as follows:
 - a. An "active" "no left turn" sign will be placed on eastbound Auzerais to prevent attempted left turns into the driveway when the gate is lowered.
 - b. Manual of Uniform Traffic Control Devices Standard R8-8 "Do Not Stop On Tracks" signs shall be installed just prior to and just after the Auzerais Avenue crossing for eastbound traffic.
 - c. Pavement striping shall be placed parallel to the tracks on the Auzerais Avenue crossing indicating the area where vehicles can safely queue.
 - d. "Keep Clear" shall be painted on the pavement within the area where vehicles cannot safely queue.

- e. A sign indicating “No left turn into driveway” shall be placed on northbound Sunol Street, south of the entrance to the FSSC delivery area.
- 6. Installation of traffic signs and markings as described in Appendix B, Appendix C, and paragraph 5 of this Order are conditions of this authorization.
- 3. Ordering Paragraph 9 of D.04-11-035 is deleted and replaced with the following:
 - 9. SCVTA shall comply with all relevant requirements of the Commission’s General Orders and the Manual on Uniform Traffic Control Devices published by the Federal Highway Administration, United States Department of Transportation, as amended by the California Supplement published by the California Department of Transportation.
- 4. All motions not previously ruled on are denied.
- 5. Application 02-01-031 is closed.

This order is effective today.

Dated _____, San Francisco, California.

[Simon Appendices A-C](#)